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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
whether there has been a violation  
of the Securities Act of Washington by:

BYTEAUDIO.COM, INC., FRANK M.  
DOLNEY, ROBERT M. FLETCHER, and  
FRED C. KRISS,

Respondents.

SDO - 021 - 01

SUMMARY ORDER TO CEASE AND DESIST,  
REVOKING EXEMPTIONS, AND NOTICE OF  
INTENT IMPOSE FINES AND ORDER  
AFFIRMATIVE RELIEF

Case No. 00 - 06 - 230

THE STATE OF WASHINGTON TO:

ByteAudio.com, Inc.  
1417 South Powerline Rd.  
Pompano Beach FL 33069

Frank M. Dolney  
8700 NW 47th Drive  
Coral Springs FL 33067

Robert M. Fletcher  
8700 NW 47th Drive  
Coral Springs FL 33067

Fred C. Kriss  
4521 PGA Blvd., #108  
Palm Beach Gardens FL 33401

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, ByteAudio.com, Inc., Frank M. Dolney, Robert M. Fletcher, and Fred C. Kriss have each violated the Securities Act of Washington and that their violations justify the entry of an order against each by the Securities Administrator under RCW 21.20.390 to cease and desist from such violations. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such violations would be hazardous to investors and to the public, and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

SUMMARY ORDER TO CEASE AND  
DESIST, REVOKING EXEMPTIONS, AND  
NOTICE OF INTENT IMPOSE FINES AND  
ORDER AFFIRMATIVE RELIEF

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

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**TENTATIVE FINDINGS OF FACT**

**I. RESPONDENTS**

1. ByteAudio.com, Inc. ("ByteAudio") is an active for-profit Florida corporation authorized to do business November 29, 1999. ByteAudio is a music portal and e-commerce publishing company and retailer specializing in the distribution of digital music over the Internet. ByteAudio maintains its principal place of business at 1417 South Powerline Road, Pompano Beach, Florida.
2. Frank M. Dolney ("Dolney") is the Chairman and a Director of ByteAudio.
3. Robert M. Fletcher ("Fletcher") is the President, Chief Executive Officer, and a Director of ByteAudio.
4. Fred C. Kriss ("Kriss") is the Chief Operating Officer and a Director of ByteAudio.

**II. NATURE OF THE VIOLATIONS**

A. Offers Through First Americap, Corp.

5. On or about January 5, 2000, Respondents completed a Private Placement Memorandum ("PPM") for use in an offering of 3,500,000 shares of ByteAudio common stock. On or about February 2, 2000, Respondent Fletcher, on behalf of ByteAudio entered into a contract with First Americap, Corp., ("Americap"), a Texas for-profit corporation, for services described in the contract as "investor relations." Salespeople for Americap, an unregistered broker/dealer operating out of Houston, began calling Washington residents soliciting investments in ByteAudio. Calls were made to Washington residents who were non-accredited, unsophisticated investors who had no prior relationship with either ByteAudio or Americap.
6. On or about April 1, 2000, a Washington resident ("the resident") was contacted by a salesperson at First Americap who offered to sell the resident shares of ByteAudio stock. The resident had no prior business relationship with either Americap or ByteAudio, and at the time of the offer was neither an accredited nor a sophisticated investor. The Americap salesperson did not ask about the resident's status as an accredited or a sophisticated investor. The resident expressed interest in the offering and asked for written materials. On or

1 about April 7, 2000, the resident received offering documents from Respondents. The offering documents  
2 included the PPM dated January 5, 2000; an Overview and Executive Summary; an Investor Questionnaire; a  
3 Subscription Agreement; a brochure describing the firm; and a business card from Robert M. Fletcher,  
4 President and CEO of ByteAudio.

5 7. The PPM describes Byte's planned offering of 3,500,000 shares of common stock, with 2,000,000 shares  
6 available at \$1.00 per share and 1,500,000 shares available at \$2.00 per share. The PPM states that there  
7 would be a minimum investment of \$5,000. The PPM indicates that the offering was being made in reliance  
8 on Regulation D, Rule 506 and, therefore, could be made only to certain accredited investors and to no more  
9 than 35 non-accredited sophisticated investors.

#### 10 B. Offers by Means of the Internet

11 8. Respondents placed its PPM and accompanying documents on its Internet web site, ByteAudio.com. On  
12 or about June 8, 2000, the information available on the web site included the PPM as a Word document; a  
13 Microsoft PowerPoint Summary describing the firm and the offering; an Executive Summary describing the  
14 firm and the offering in PDF format; press releases about the company; investor updates; and wire transfer  
15 instructions. The web site declared that an investment in Byte was being offered only by prospectus.  
16 However, the web site was not password protected, allowing unregulated access to the offering materials by  
17 Washington State residents.

#### 18 C. Misrepresentations and Omissions

19 9. Prospective Washington investors who received the offering materials from Respondents received  
20 numerous follow-up calls from salespeople at Americap, who used high-pressure sales tactics to induce  
21 Washington residents to invest in ByteAudio stock. The salespeople indicated that ByteAudio's first round of  
22 financing was about to close, and that when the second round began the stock price would be higher.  
23 Prospective investors were told that this was a pre-IPO opportunity, and that the firm was going to "go  
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1 public” in a few months and be listed on an exchange. Americap salespeople told prospective investors that  
2 when ByteAudio made its initial public offering the value of its stock could go up more than \$50 per share.

3 10. The PPM failed to disclose that ByteAudio had contracted with Americap, an unregistered  
4 broker/dealer using unregistered salespeople to offer and sell its stock. Furthermore, the PPM failed to  
5 disclose that by doing so, and by allowing unregulated access to its offering documents on its web site,  
6 ByteAudio was engaging in a general solicitation, resulting in disqualification from the claimed exemption  
7 from registration.

8 11. The PPM failed to include a legend indicating that neither the Securities and Exchange Commission nor  
9 any state securities commission had approved or disapproved of the securities; failed to disclose the factors  
10 considered in determining the offering price; failed to disclose the plan of distribution; failed to include  
11 sufficient information on each executive officer and key person; failed to disclose certain relationships and  
12 related transactions, e.g.; contracts with promoters; and failed to disclose management's plan of operation.

13 12. The PPM contained no financial information about the company. In the PPM, ByteAudio stated they  
14 were a "0,0" company, capitalized only for pre-development and not for an effective market entry or efficient  
15 operations. As such, ByteAudio stated that their, "historical financials are not significant in determining the  
16 potential earning capabilities or accurate expense levels of the business."  
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#### 18 D. Registration

19 13. Respondents ByteAudio, Fletcher, Dolney, and their agent, First Americap, and their agents or  
20 employees are not currently registered to offer or sell securities in the State of Washington, and have not  
21 previously been so registered. Respondent ByteAudio's securities are not currently registered in the State of  
22 Washington, have not previously been so registered, and no claim of exemption for said securities is on file  
23 with the Division.  
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14. The Securities Administrator finds that the continued offering of ByteAudio stock in the manner described in the Tentative Findings of Fact, Section II, Paragraphs 5 through 14 above, and the continued availability of exemptions to Respondents, presents a threat to the investing public.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

### III. CONCLUSIONS OF LAW

1. The offer and/or sale of ByteAudio stock by Respondents constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).
2. The offer and/or sale of said securities by Respondents was made in violation of RCW 21.20.140 because no registration or notification of claim of exemption for such offer and/or sale was or is on file with the Securities Administrator, State of Washington, and it appears that the Respondents do not otherwise qualify for an exemption from registration.
3. Respondents have each violated RCW 21.20.040 by offering and/or selling said securities through their agent First Americap, Corp. while neither was registered as securities salespersons or as broker/dealers in the State of Washington.
4. Respondents have each violated RCW 21.20.010 in connection with the offer and/or sale of said securities because the representations made to potential investors regarding the pre-IPO opportunity, the public offering of the stock of ByteAudio, and projections of the stock's future value were made with no reasonable basis in fact. Respondents also omitted material facts in their offering documents that made the statements made in those documents misleading. Additionally, the acts, practices, and course of business conduct engaged in by Respondents served to operate as a fraud or deceit upon investors.

**EMERGENCY**

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2 Based upon the foregoing, the Securities Administrator finds that an emergency exists, that Respondents'  
3 continued violations of RCW 21.20.140, RCW 21.20.040, and RCW 21.20.010, and the continued  
4 availability of exemptions under RCW 21.20.320, constitutes a threat to the investing public. The Securities  
5 Administrator finds that a Summary Order to Cease and Desist from those violations, and the summary  
6 withdrawal of the availability of exemptions under RCW 21.20.320, is in the public interest and necessary for  
7 the protection of the investing public.

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9 **SUMMARY ORDER**

10 Based on the foregoing, NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that  
11 Respondents, ByteAudio.com, Inc., Frank M. Dolney, Robert M. Fletcher, and Fred C. Kriss, their agents and  
12 employees, shall each cease and desist from offering and/or selling securities in any manner in violation of  
13 RCW 21.20.140, the securities registration section of the Securities Act of Washington.  
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15 It is further SUMMARILY ORDERED that Respondents, their agents and employees, shall each cease  
16 and desist from violation of RCW 21.20.040, the broker/dealer and salesperson registration section of the  
17 Securities Act of Washington.

18 It is further SUMMARILY ORDERED that Respondents, their agents and employees, shall each cease  
19 and desist from violation of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

20 It is further SUMMARILY ORDERED that based upon the foregoing violations of RCW 21.20.010, the  
21 exemptions available to Respondents under RCW 21.20.320(1), (9), (11) and (17) are hereby withdrawn.  
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**NOTICE OF INTENT TO IMPOSE FINES**

Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator finds that Respondents have committed ten or more knowing or reckless violations of the Securities Act such that the imposition of fines is required. Therefore, the Securities Administrator intends to order that Respondents shall be jointly and severally liable for and pay a fine in the amount of \$5,000 per violation, for a total of \$50,000.

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**NOTICE OF INTENT TO ORDER AFFIRMATIVE RELIEF**

Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents shall be jointly and severally liable for and shall provide appropriate affirmative relief, including, without limitation, a requirement to provide full restitution to all Washington purchasers of ByteAudio.com, Inc. stock.

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**AUTHORITY AND PROCEDURE**

This Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.325, and is subject to the provisions of Chapter 34.05 RCW. Respondents may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order. If any Respondent does not request a hearing, as to that Respondent, the Securities Administrator intends to adopt the above Tentative Findings of Fact, Conclusions of Law, and Summary Order as final, impose the fines and affirmative relief sought, and permanently revoke the

1 exemptions available under RCW 21.20.320.

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3 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

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5 ENTERED this 30th day of May, 2001.

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8 DEBORAH R. BORTNER  
9 Securities Administrator

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11 Approved by:

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11 Presented by:

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13 \_\_\_\_\_  
14 Michael E. Stevenson  
14 Chief of Enforcement

12  
13 \_\_\_\_\_  
14 Anthony W. Carter  
14 Securities Examiner